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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,409	03/16/2004	Paul N. Stoving	08215-540001 / P03-026853	3843
26171	7590	02/17/2005	EXAMINER	
FISH & RICHARDSON P.C. 1425 K STREET, N.W. 11TH FLOOR WASHINGTON, DC 20005-3500			FISHMAN, MARINA	
			ART UNIT	PAPER NUMBER
			2832	

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

NA

Office Action Summary	Application No. 10/802,409	Applicant(s) STOVING ET AL.	
	Examiner Marina Fishman	Art Unit 2832	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 9-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 8 and 18 - 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03/16/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

General status

1. Applicant's election without traverse of Group I, readable on claims 1 – 8 and 18 - 21 in Paper received 01/03/2005 is acknowledged. Claims 9 – 17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 4, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kumbera et al. [US 4,168,414].

Kumbera et al. disclose a vacuum switching device comprising:

- a vacuum interrupter [3];
- a current exchange housing adjacent to the vacuum interrupter [Figure 3];
- a seal [51] provided around the vacuum interrupter and the current exchange housing so as to define a cavity [space between element 50 and bottom end of element 42, Figure 3] within the current exchange housing and adjacent to the vacuum interrupter; and

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- a tube [47] provided within the seal, the tube disposed such that a first end of the tube accesses the cavity and a second end of the tube accesses an exterior of the seal;
- an operating rod [40]

4. Claims 1 - 4, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Pflanz [US 3,849,617].

Pflanz disclose a vacuum switching device comprising:

- a vacuum interrupter [10];
- a current exchange housing adjacent to the vacuum interrupter [Figure 1];
- a seal [11,14] provided around the vacuum interrupter and the current exchange housing so as to define a cavity [71,72, 23] within the current exchange housing and adjacent to the vacuum interrupter; and
- a tube [24; Column 2, lines 60-65] provided within the seal, the tube disposed such that a first end of the tube accesses the cavity and a second end of the tube accesses an exterior of the seal;
- an operating rod [27].

Regarding Claim 2, the tube [24] is functionally equivalent to a syringe needle

inserted through the seal. The tube [24] functions to evacuate the air from the cavity. A syringe needle is merely a hollow tube that in the instant invention performs the same function as Pflanz's tube [24].

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5, 6, 7 and 18 - 21 rejected under 35 U.S.C. 103(a) as being unpatentable over Pflanz [US 3,849,617].

Regarding Claim 5, Pflanz discloses that the seal [11,14] can be made of any suitable material [Column 2, lines 48 – 51]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the encapsulation material include a pre-filled, hot-curing, two-component epoxy resin, since it is been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability. [In re Leshin, 125 USPQ 416.]

Regarding Claims 6, 7, 18 and 21, Pflanz discloses the instant claimed invention but is silent as to the method of manufacturing the vacuum interrupter with these materials. As set forth in MPEP 2113, product by process claims are NOT limited to the manipulations of the recited steps, only to the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 USC 102/103

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rejection may be made and the burden is shifted to Applicant to show an unobvious difference.

Regarding Claims 19 and 20, Pflanz discloses the means [24; Column 2, lines 60-65] for reducing a pressure differential includes an air passageway from the air-filled cavity to the space exterior to the seal.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Fishman whose telephone number is 571-272-1991. The examiner can normally be reached on 7-5 M-T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Elvin Enad can be reached on 571-272-1990. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marina Fishman
February 9, 2005

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LINCOLN SCHOLMAN
PRIMARY EXAMINER
GROUP 2100